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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

13 NEXTDOOR.COM, INC., a Delaware
 14 corporation,

15 Plaintiff,

16 v.

17 RAJ ABHYANKER, an individual,

18 Defendant.

20 RAJ ABHYANKER, an individual,

21 Counterclaimant,

22 v.

23 NEXTDOOR.COM, INC., a Delaware
 24 corporation; PRAKASH JANAKIRAMAN, an
 25 individual; BENCHMARK CAPITAL
 26 PARTNERS VII, L.P., a Delaware limited
 27 partnership; BENCHMARK CAPITAL
 MANAGEMENT CO. VII LLC, a Delaware
 limited liability company; SANDEEP SOOD, an
 individual; MONSOON COMPANY, an
 unknown business entity, and DOES 1-50,
 inclusive,

28 Counterdefendants.

Case No.: 3:12-cv-05667-EMC

**REQUEST FOR JUDICIAL NOTICE
 IN SUPPORT OF NEXTDOOR.COM,
 INC. AND PRAKASH
 JANAKIRAMAN'S MOTION TO
 DISMISS COUNTERCLAIMS AND
 STRIKE AFFIRMATIVE DEFENSES**

Date: May 2, 2013
 Time: 1:30 P.M.
 Judge: Honorable Edward M. Chen

1 In support of their Motion to Dismiss Counterclaims and Strike Affirmative Defenses
 2 (“Motion to Dismiss and Strike”), Plaintiff and Counterdefendant Nextdoor.com, Inc.
 3 (“Nextdoor.com”) and Counterdefendant Prakash Janakiraman (“Janakiraman”) (collectively
 4 “Counterdefendants”) submit this Request for Judicial Notice concerning the following
 5 documents, which are properly before the Court on the Motion to Dismiss and Strike:

- 6 1) Counterclaimant Raj Abhyanker’s (“Abhyanker”) November 22, 2006
 7 public patent application number 11/603,442 entitled Map Based
 8 Neighborhood Search and Community Contribution (**Exhibit 1**) (*see also*
 9 Declaration of Jennifer L. Kelly in Support of Counterdefendants’ Request
 10 for Judicial Notice (“Kelly Decl.”) ¶ 2);
- 11 2) Abhyanker’s publicly recorded January 28, 2008 assignment of United
 12 States Patent Application No. 11/603,442 to Fatdoor, Inc. (**Exhibit 2**) (*see*
 13 *also* Kelly Decl. ¶ 3);
- 14 3) The Complaint filed by Abhyanker on November 10, 2011 in California
 15 Superior Court (Santa Clara County), Case No. 1-11-cv-212924, *Abhyanker*
 16 *v. Benchmark Capital Partners VII, L.P. et al.* (the “State Court Action”)
 17 (**Exhibit 3**) (*see also* Kelly Decl. ¶ 4);
- 18 4) The First Amended Complaint (“FAC”) filed by Abhyanker on December 6,
 19 2011 in the State Court Action (**Exhibit 4**) (*see also* Kelly Decl. ¶ 5);
- 20 5) Abhyanker’s Notice of Opposition to Nextdoor.com’s application to register
 21 the NEXTDOOR mark filed in the United States Trademark Trial and
 22 Appeal Board (“TTAB”) on January 10, 2012, Opposition No. 91203462
 23 (“First Opposition”) (**Exhibit 5**) (*see also* Kelly Decl. ¶ 6);
- 24 6) Abhyanker’s February 7, 2012 Request for Dismissal of the State Court
 25 Action (**Exhibit 6**) (*see also* Kelly Decl. ¶ 7);
- 26 7) Abhyanker’s Notice of Opposition to Nextdoor.com’s application to register
 27 the NEXTDOOR mark filed in the TTAB on February 9, 2012, Opposition
 28 No. 91203762 (“Second Opposition”) (**Exhibit 7**) (*see also* Kelly Decl. ¶ 8).
- 8) The order issued by the TTAB on November 6, 2012 suspending Proceeding
 No. 91204462 pending determination of this action. (**Exhibit 8**) (*see also*
 Kelly Decl. ¶ 9).

25 As explained below, these documents are properly the subject of judicial notice under
 26 Federal Rule of Evidence 201, and this Court may consider them and their contents in deciding
 27 Counterdefendants’ Motion to Dismiss and Strike.

1 **I. ABHYANKER'S STATE COURT ACTION AND TRADEMARK TRIAL AND**
 2 **APPEAL BOARD PLEADINGS ARE APPROPRIATELY THE SUBJECT OF**
 3 **JUDICIAL NOTICE.**

4 Under Federal Rule of Evidence 201, the Court may take judicial notice of any facts “not
 5 subject to reasonable dispute” in that they are “capable of accurate and ready determination by
 6 resort to sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2).
 7 Courts in the Ninth Circuit routinely take judicial notice of documents filed in related litigation,
 8 including documents filed in related state court proceedings and the TTAB. *See, e.g., Reyn's*
 9 *Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) (taking judicial notice
 10 of court documents and pleadings in related litigation and considering their contents); *Burbank-*
 11 *Glendale-Pasadena Airport Authority v. City of Burbank*, 136 F.3d 1360, 1364 (9th Cir. 1998)
 12 (taking judicial notice, in a federal action, of pleadings filed in California Superior Court);
 13 *Sensible Foods, LLC v. World Gourmet, Inc.*, Case No. 11-2819, 2012 U.S. Dist. LEXIS 21446,
 14 at *12-*13 (N.D. Cal. Feb. 21, 2012) (taking judicial notice of documents filed in the TTAB in
 15 related federal litigation). This includes not only noticing the fact of these documents’ filing, but
 16 the nature of the allegations and arguments made in those documents. *See, e.g., Reyn's Pasta*
 17 *Bella*, 442 F.3d at 746 n.6 (considering the contents of court documents in related litigation to
 18 determine the issues actually litigated in that case); *Sensible Foods*, 2012 U.S. Dist. LEXIS
 19 21446, at *12-*13 (considering the contents of documents filed in the TTAB and dismissing with
 20 prejudice based on those contents). Consideration of such documents does not convert a motion
 21 to dismiss into one for summary judgment. *See, e.g., In re Calpine Corp. Sec. Litig.*, 288 F.
 22 Supp. 2d 1054, 1076 (N.D. Cal. 2003).

23 Exhibits 3-7 to this Request for Judicial Notice are pleadings that Counterclaimant
 24 Abhyanker filed in the California Superior Court for the County of Santa Clara and in the TTAB
 25 in related litigation against Counterdefendant Nextdoor.com, and Exhibit 8 is an order issued by
 26 the TTAB suspending those proceedings pending determination of this action. These prior
 27 pleadings assert many of the same factual allegations and claims that Abhyanker has asserted in
 28 this litigation. As further explained in the Motion to Dismiss and Strike, in the State Court

1 Action, Abhyanker alleged a number of related causes of action against Counterdefendant
 2 Nextdoor.com, including a claim for trade secret misappropriation based on the same general
 3 theories asserted here. *See* Ex. 4. The TTAB Oppositions also involve many overlapping
 4 allegations to those asserted here—in essence, claiming that Abhyanker has prior rights in a
 5 neighborhood social networking website called Nextdoor.com that he claims Counterdefendant
 6 Nextdoor.com stole. Exs. 5, 7.

7 As explained by the Motion to Dismiss and Strike, consideration of these documents is
 8 appropriate given that they directly contradict assertions now made by Abhyanker in this related
 9 litigation. The genuineness of these publicly available documents cannot be disputed. *See, e.g.*,
 10 *Reyn's Pasta Bella*, 442 F.3d at 746 n.6 (court filings “are readily verifiable and, therefore, the
 11 proper subject of judicial notice”). As such, this Court may take judicial notice of Exhibits 3-8 in
 12 deciding Counterdefendants’ Motion to Dismiss and Strike.

13 **II. ABHYANKER’S PATENT FILINGS ARE ALSO SUBJECT TO JUDICIAL
 14 NOTICE.**

15 Courts also routinely take judicial notice of the existence and contents of documents filed
 16 with the United States Patent and Trademark Office, including patent applications and patent
 17 assignments. *See, e.g.*, *Applied Materials v. Advanced Semiconductor Materials Am.*, C-92-
 18 20643, 1994 U.S. Dist. LEXIS 17569, at *5 (N.D. Cal. Apr. 19, 1994) (taking judicial notice of
 19 patents and patent applications); *Welcome Co. v. Harriet Carter Gifts, Inc.*, Case No. 98-0598,
 20 1998 U.S. Dist. LEXIS 21884, at *9-*10 (C.D. Cal. Mar. 26, 1998) (taking judicial notice of
 21 USPTO Notice of Recordation of Assignment). Exhibits 1-2 to the Request for Judicial Notice
 22 are a patent application and assignment filed by Abhyanker. As explained by the Motion to
 23 Dismiss and Strike, these documents are fatal to Abhyanker’s claims here—demonstrating
 24 Abhyanker’s public disclosure of his purported trade secrets and confirming his lack of ownership
 25 over the asserted intellectual property. As publicly available documents, they are appropriately
 26 the subject of judicial notice and can be considered by the Court in deciding the Motion to
 27 Dismiss and Strike.

CONCLUSION

For the foregoing reasons, Counterdefendants respectfully request that the Court take judicial notice of Exhibits 1-8 to this Request for Judicial Notice in deciding their Motion to Dismiss and Strike.

Dated: March 15, 2013

FENWICK & WEST LLP

By: /s/ Jennifer L. Kelly
Jennifer L. Kelly

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